



## Do Not Call Register (Consequential Amendments) Bill 2006

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## Do Not Call Register (Consequential Amendments) Bill 2006

**Date introduced:** 25 May 2006

**House:** House of Representatives

**Portfolio:** Communications, Information Technology and the Arts

**Commencement:** The introductory provisions and Part 1 of Schedule 1 commence on Royal Assent. Part 2 of Schedule 1 commences at the same time as Part 2 of the proposed *Do Not Call Register Act 2006* (that is 12 months after Royal Assent unless commenced earlier by proclamation).

### Purpose

The purpose of the Bill is to:

- enable the development of relevant industry codes and standards relating to telemarketing, and
- make various consequential amendments to the *Telecommunications Act 1997*, the *Australian Communications and Media Authority Act 2005* and the *Telecommunications (Carrier Licence Charges) Act 1997* to enable investigation, compliance and enforcement action to be undertaken by the Australian Communications and Media Authority (ACMA) to support the operation of the proposed *Do Not Call Register Act 2006*.

### Background

A detailed *Background* is provided in the accompanying Bills Digest on the Do Not Call Register Bill 2006.

### Main provisions

#### Schedule 1—Amendments

##### Part 1

The amendments made by Part 1, below, of Schedule 1 commence on Royal Assent.

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*Telecommunications Act 1997*

Section 3 of the *Telecommunications Act 1997* (TA) specifies that one of the main objects of the TA is to provide a regulatory framework that promotes the long-term interests of end-users of carriage services or services provided by means of carriage services. A 'carriage service' means a service for carrying communications.

**Item 1** amends subsection 3(2) to set out an additional object which is to promote responsible practices in relation to the making of telemarketing calls.

**Item 2** amends section 5 to add a reference to the telemarketing industry in the simplified outline of the TA.

**Items 3 to 6** insert definitions in the interpretation section of the TA, including a definition of the telemarketing industry and a telemarketing call. A telemarketing call incorporates the meaning given to it in the proposed *Do Not Call Register Act 2006* and is broadened to include calls for which one of the purposes is:

- to conduct opinion polling, or
- to carry out standard questionnaire-based research (as defined in **clause 4**).

Section 106 of the TA is the simplified outline for Part 6—Industry Codes and Industry Standards for the telecommunications industry. **Item 7** adds references in this section to the telemarketing industry.

**Item 8** inserts **new section 109B** in Part 6 of the TA to specify criteria that identify what a telemarketing activity is for the purposes of industry codes and standards that are developed by bodies and associations that represent sections of the telemarketing industry. It is drafted to maintain consistency with technical definitions in the *Do Not Call Register Bill 2006*.

**Item 9** inserts a **new section 110B** in the TA to clarify that there are sections of the telemarketing industry that may develop relevant codes and standards. Likewise, **item 10** inserts a **new section 111AA** in the TA to define participants in a section of the telemarketing industry.

Division 3 of Part 6 of the TA deals with matters such as the statement of regulatory policy applicable to the general principles relating to industry codes and standards. The administration of the policy rests with the ACMA. The ACMA is established under the *Australian Communications Media Authority Act 2005*. The ACMA is the successor body to the amalgamation of the Australian Communications Authority and the Australian Broadcasting Authority. The ACMA is empowered to give directions to carriers and telecommunications service providers. The ACMA regulates the telecommunications industry. **Item 11** inserts a **new subsection 112(1B)** in the TA to expressly state that it is Parliament's intention that the ACMA's regulation extends to the examination of industry codes prepared by sections of the telemarketing industry. **Item 14** inserts **new subsection**

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**112(3C)** in the TA to provide criteria that the ACMA must take into account when determining whether public interest considerations are being addressed in a way that does not impose undue financial administrative burdens on participants in the telemarketing industry. The criteria include factors such as the number of persons likely to benefit from the code or standard, the extent to which those persons are householders or small business operators, and the legitimate business interests of participants in sections of the telemarketing industry.

Subsection 113(3) gives examples of the matters that industry codes and industry standards may deal with. **Item 17** inserts **new paragraphs 113(3)(w) to 113(3)(y)** in the TA to give examples of matters relevant to the telemarketing industry that may be dealt with by industry codes and standards. Basically, the codes are expected to deal with agreed procedures and actions that will be taken by the industry to regulate telemarketing calls.

**Items 12, 13, 15, 16, 18, 19, 20, 21 to 35, and 37 to 38** are minor reference amendments.

**Item 36** inserts **new section 125A** that requires the ACMA to determine an industry standard for the telemarketing industry. The industry standard, which will be a legislative instrument must be in place at the commencement of Part 2 of the proposed *Do Not Call Register Act 2006*. It must deal with the following matters:

- the time and/or days during which telemarketing calls may be made
- the specific information about the telemarketer that must be included in a call
- a requirement that telemarketers enable calling line identification when making calls
- a requirement that participants terminate telemarketing calls in specific circumstances.

These industry standards will apply to all persons and organisations making telemarketing calls, including those exempt under the proposed *Do Not Call Register Act 2006*.

Before determining or varying the industry standard the ACMA must consult with:

- any relevant industry body or association (**new subsection 125A(3)**) and
- the states and territories (**item 41**).

The Explanatory Memorandum also points out that under other provisions in the TA the ACMA has existing obligations to consult with the general public, the ACCC, the Privacy Commissioner and at least one consumer body before determining conduct standards.<sup>1</sup>

## Part 2

The amendments made by Part 2, below, of Schedule 1 commence at the same time as Part 2 of the *Do Not Call Register Act 2006* commences.

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*Australian Communication Media Authority Act 2005*

As noted above, the ACMA is to be the regulator of the telemarketing industry. The ACMA is established under the ACMA Act. **Items 42** inserts a specific reference in the ACMA Act to the proposed *Do Not Call Register Act 2006*.

*Telecommunications Act 1997*

**Items 44, 50 to 52, 54 to 57, and 59 to 71** make minor consequential amendments to the TA to insert references to the proposed *Do Not Call Register Act 2006* for the purposes of inclusion in existing provisions that deal with matters such as inquiries, investigations and enforcement by the ACMA. In passing, it should also be noted that apart from hearings conducted by the ACMA, the Minister may give a direction to the Australian Competition and Consumer Commission (ACCC) to hold an inquiry into specified matters in the telecommunications industry (see Part 25—Public Inquiries of the TA). **Item 51** inserts a reference to the proposed *Do Not Call Register Act 2006* as a matter that may be the subject of a hearing by the ACCC.

**Item 49** inserts **new section 139**. It prohibits a person or organisation entering into a telemarketing contract, arrangement or understanding unless the contract, arrangement or understanding contains an express obligation requiring the other party to comply with Part 6 of the TA in relation to telemarketing activities. This clause corresponds to clause 12 in the Do Not Call Register Bill. It is a civil penalty provision and the penalty regime for clause 12 will apply (**item 60**).

The Explanatory Memorandum states that this provision is likely to assist where a business operating in Australia contracts with an overseas telemarketer to provide telemarketing services to Australian numbers. ‘[T]his provision puts a further obligation on persons outsourcing their telemarketing calls to assist in ensuring that such persons will comply with Part 6 of the Telecommunications Act by making it a contractual requirement.’<sup>2</sup>

**Item 53** inserts **new subsection 509(5)** into the TA. It places an obligation on the ACMA to investigate and provide assistance regarding caller identification in cases where a person makes a complaint about an alleged breach of a telemarketing code or standard, or about a breach of the proposed Do Not Call Register Act. The Explanatory Memorandum states that this would enable a person to make a complaint about receiving silent calls.<sup>3</sup>

**Item 58** inserts **new section 515A**. It provides that the ACMA may transfer complaints regarding a breach of a telemarketing code, industry standard or the Do Not Call Register Act to the Privacy Commissioner. The ACMA must transfer the complaint where satisfied that the complaint would be more conveniently and effectively dealt with by the Privacy Commissioner under section 36 of the *Privacy Act 1988*.

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*Telecommunications (Carrier Licence Charges) Act 1997*

The Telecommunications (Carrier Licence Charges) Act imposes charges in relation to carrier licences under the TA. The amount of the charge imposed on a carrier licence is determined by the ACMA according to a range of factors. One of those factors is the amount of the ACMA's costs for its telecommunications functions and powers. **Items 72** and **73** make amendments to the definition of the ACMA's telecommunications functions and powers in subsection 15(4). The effect is to ensure that carriers do not fund ACMA's telecommunications powers and functions so far as they relate to telemarketing.

## Endnotes

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1. Explanatory Memorandum, p. 20.
2. *ibid.*, p. 25.
3. *ibid.*, p. 27.

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